

**Remarks**

Applicants request that the present patent application be reconsidered in view of the above amendments and following remarks. The specification and claims 1, 4-6, 8-11 and 13-15 have been amended. No claims have been cancelled or added. Therefore, claims 1-15 are pending in the present patent application.

The specification has been objected to because the Examiner is of the opinion that the term "cabinet" is used at variance to the accepted meaning. See *Office Action*, pg. 2. It is the opinion of the Examiner that a more appropriate term should be found for element 11. Therefore, the specification has been amended to change the term "cabinet" to "panel," and Applicants request that the objection to the specification be withdrawn.

Claims 1-15 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. See *Office Action*, pg. 2. In light of the amendments to the specification set forth above, claims 1, 4-6, 8, 10, 11, 14 and 15 have been amended to change the term "cabinet" to "panel." Thus, Applicants request that the rejection to claims 1-15 be withdrawn.

Claims 1, 4-8, 10, 11, 14 and 15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,057,977 to Kurzman ("the Kurzman reference"). Applicants respectfully traverse this rejection.

Independent claim 1 is directed to an enclosure for storing one or more guns. The enclosure includes an interior compartment defined by a top wall, a bottom wall and one or more side walls. The enclosure also includes at least one panel having first and second surfaces, wherein the panel is slidably positioned within the interior compartment. A gun rack is coupled to the first surface of the panel, wherein the panel is selectively moved into and out of the interior compartment.

The Examiner has failed to provide any reason why one of ordinary skill in the art would have been motivated to modify the Kurzman reference to include an enclosure including a gun rack coupled to a surface of a panel, wherein the panel is selectively moved into and out of an interior compartment of the enclosure as set forth in claim 1. In order to establish a prima facie case of obviousness, the Examiner is required to provide a reason why one of ordinary skill in the art would have been motivated to modify the prior art to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). Even when obviousness is based on a single prior art reference, there must be actual evidence showing a suggestion or motivation to modify the teachings of that reference. See *In re Kotzab*, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). The showing must be clear and particular. See *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999); see also *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968) (stating that a rejection based upon 35 U.S.C. § 103(a) must rest on a factual basis).

In rejecting claim 1, the Examiner states that the Kurzman reference does not show a gun rack. *See Office Action*, pg. 3. Since the Kurzman reference does not specifically disclose a gun rack, the Examiner goes on to state that it would have been obvious to one with ordinary skill in the art to use the drawer (42) and the cabinet (40) shown in FIG. 2 of the Kurzman reference to store and display any type of object. *See id.* However, claim 1 does not recite that a gun is positioned within a drawer (42) or cabinet (40), as suggested by the Examiner. Instead, claim 1 states that a gun rack is coupled to a first surface of a panel that moves into and out of the interior compartment of an enclosure. If the Examiner is saying that the drawer (42) or cabinet (40) are gun racks, then the Examiner has failed to provide any specific evidence to show that either the drawer (42) or cabinet (40) are gun racks positioned on a surface of the module (12). If anything, the drawer (42) and cabinet (40) are located within an interior portion of the module (12), not on a surface of the module (12). Even if the module (12) in Kurzman reference could be modified in the manner suggested by the Examiner, which Applicants disagree with, the modification is not obvious unless the prior art suggested the desirability of the modification. *See In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). The Examiner has failed to present any specific evidence to show that the Kurzman reference suggested such a modification.

For at least this reason, Applicants submit that a prima facie case of obviousness has not been established and Applicants request that the rejection of claim 1 be withdrawn. As claims 4-8 depend either directly or indirectly from

claim 1, these claims are also not taught or suggested by the references of record for at least the same reason set forth with respect to claim 1. Therefore, Applicants request that the rejection of claims 4-8 be withdrawn.

Dependent claim 7 includes an additional feature not disclosed in the Kurzman reference. Claim 7 states that the track is coupled to a protrusion that extends from the side wall of the enclosure. In rejecting this claim, the Examiner stated that the Kurzman reference does not teach this feature, and took the position that coupling the track to a protrusion that extends from the side wall of the enclosure would be an obvious modification to one skilled in the art to keep the rails out of sight. *See Office Action*, pgs. 3-4. Applicants submit that there has been no specific evidence provided to support the Examiner's position, which is required to establish a prima facie case of obviousness. The protrusion is provided in the present invention to allow for the storage of additional guns in the space between the panel and the side wall of the enclosure, which is not suggested in the Kurzman reference. *See Specification*, pg. 5, ¶ 0021. For this additional reason, Applicants request that the rejection of claim 7 be withdrawn.

Independent claim 10 is directed to an enclosure for storing one or more guns. The enclosure includes an interior compartment defined by a top wall, a bottom wall and one or more side walls. The enclosure also includes at least one panel having first and second surfaces, at least one rail pivotally coupled to the second surface of the panel, and at least one track coupled to a protrusion formed in the side wall of the enclosure. The protrusion extends outwardly at a distance from the side wall, wherein the track and the rail are slidably coupled to

one another. The second surface of the panel is positioned at a distance from the side wall of the enclosure. A gun rack is coupled to the first surface of the panel and includes an upper barrel receiving portion and a lower lip. The panel is selectively moved into and out of the interior compartment.

For at least the same reasons set forth above with respect to claims 1 and 7, Applicants submit that the Kurzman reference does not teach or suggest an enclosure including a gun rack coupled to a surface of a panel, and at least one track coupled to a protrusion formed in the side wall of the enclosure as set forth in claim 10. The Examiner also has not presented any specific evidence in the Kurzman reference to indicate that the slidable gun rack includes an upper barrel receiving portion and a lower lip as recited in claim 10. For at least these reasons, Applicants request that the rejection of claim 10 be withdrawn. As claim 11 depends from claim 10, this claim is also not taught or suggested by the Kurzman reference for at least the same reasons set forth with respect to claim 10. Applicants request that the rejection of claim 11 be withdrawn.

Independent claim 14 is directed to an enclosure for storing one or more guns. The enclosure includes an interior compartment defined by a top wall, a bottom wall and one or more side walls. The enclosure also includes at least one panel having first and second surfaces, a gun rack coupled to the first surface of the panel, and means for selectively sliding the panel into and out of the interior compartment.

For at least the same reason set forth above with respect to claim 1, Applicants submit that the Kurzman reference does not teach or suggest an

enclosure including a gun rack coupled to a surface of a panel that slides into and out of an interior compartment of the enclosure as set forth in claim 14.

Therefore, Applicants request that the rejection of claim 14 be withdrawn. As claim 15 depends from claim 14, this claim is also not taught or suggested by the Kurzman reference for at least the same reasons set forth with respect to claim 14. Applicants request that the rejection of claim 15 be withdrawn.

Claims 2, 3 and 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Kurzman reference in view of U.S. Patent No. 6,042,207 to Crosby ("the Crosby reference"). Applicants respectfully traverse this rejection.

Claim 2 depends from claim 1 and states that the gun rack includes an upper barrel receiving portion and a lower lip. Claims 3 and 12 depend from claims 1 and 10, respectively, and state that the barrel receiving portion further comprises a plurality of recesses for receiving a barrel of a gun.

As stated above with respect to claims 1 and 10, the Kurzman reference does not teach or suggest an enclosure including a gun rack coupled to a surface of a panel, wherein the panel is selectively moved into and out of an interior compartment of the enclosure. While the Crosby reference shows a reconfigurable gun rack (16) that may be mounted to the interior walls (30, 32) of the safe (10), the Crosby reference fails to teach or suggest the limitations that were lacking in the Kurzman reference. In particular, no specific evidence has been provided to suggest that the reconfigurable gun rack (16) in the Crosby reference could be used on the modules (12) provided in the Kurzman reference. The Examiner states that it would have been obvious to modify the module (12)

in the Kurzman reference to include the gun rack (16) shown in the Crosby reference to make the module (12) suitable for firearm storage without providing any evidence showing a suggestion for making such a modification. See *Office Action*, pg. 4; see also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (stating that it is impermissible to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention). In addition, Applicants submit that an obviousness rejection is not appropriate in this situation since the module (12) in the Kurzman reference would have to be substantially reconstructed or redesigned to arrive at the present invention. See *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). For at least these reasons, Applicants request that the rejection of claims 2, 3 and 12 be withdrawn.

Claims 9 and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Kurzman reference in view of U.S. Patent No. 4,899,971 to Elkin ("the Elkin reference"). Applicants respectfully traverse this rejection.

Claims 9 and 13 depend from claims 1 and 10, respectively, and state that a mounting bracket is attached to the side wall of the enclosure, and a plurality of barrel receiving pieces are coupled to the mounting bracket.

As stated above with respect to claims 1 and 10, the Kurzman reference does not teach or suggest an enclosure including a gun rack coupled to a surface of a panel, wherein the panel is selectively moved into and out of an interior compartment of the enclosure. The Elkin also fails to teach or suggest the limitation that was lacking in the Kurzman reference.

Furthermore, none of the references of record teach or suggest an enclosure including a plurality of barrel receiving pieces coupled to the mounting bracket as recited in claims 9 and 13. The Examiner acknowledges that the Kurzman reference does not show brackets configured for receiving gun barrel supporting members. See *Office Action*, pg. 4. The Elkin reference discloses a channel member (12) that is adapted to receive a box (16) or a hanger member (52). See *Elkin*, FIG. 6. The Elkin reference does not suggest coupling a barrel receiving piece to the channel member (12). The Examiner states that it would have been obvious to modify the Kurzman reference to include the channel member (12) from the Elkin reference and the barrel receiving pieces shown in FIG. 6 of the present patent application. See *Office Action*, pgs. 4-5. However, it is improper to use the Applicants' disclosure as a basis for the motivation to modify the Kurzman reference to arrive at the claimed invention. See *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984). For at least these reasons, Applicants request that the rejection of claims 9 and 13 be withdrawn.

### **Conclusion**

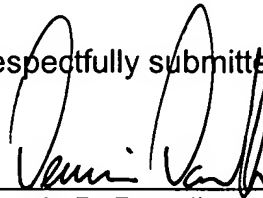
In view of the above, Applicants submit that claims 1-15 are in condition for allowance and such allowance is respectfully requested. Should the Examiner feel that any unresolved issues remain in this case, the undersigned may be contacted at the telephone number listed below to arrange for an issue resolving conference.



The Commissioner is hereby authorized to charge the \$120.00 for the one-month extension of time, and any other fee that may have been overlooked, to Deposit Account No. 10-0223.

Dated: 1/9/06

Respectfully submitted,



Dennis B. Danella  
Reg. No. 46,653

**JAECKLE FLEISCHMANN & MUGEL, LLP**  
190 Linden Oaks  
Rochester, New York 14625-2812  
Tel: (585) 899-2930  
Fax: (585) 899-2931